

REMARKS

Claims 3-7, 10, 15-16 and 26 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,397,104 in view of U.S. Patent No. 6,591,135 ("Palmer"). While disagreeing with the assertion that the teachings of these two patents can be combined, applicants agree with paragraph 1 of the Office action which states that this rejection can be overcome with a timely filed terminal disclaimer. Accordingly a terminal disclaimer signed by the registered attorney of record is enclosed. It is therefore respectfully submitted that this ground of rejection has been overcome.

Claims 3-7 and 10 were objected to on the ground that the preamble is unclear. The Examiner has suggested an amendment to Claim 10 to cure this informality. The Examiner's suggestion has been adopted word-for-word in the above amendment to Claim 10. Claims 3-7 depend from Claim 10. Accordingly it is respectfully submitted that this objection has been resolved.

Claims 3-7, 10, 15-16 and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication 2003/0114885 ("Nova") in view of Palmer. The Nova application was filed on September 30, 2002 and claims the benefit of a provisional application filed on October 2, 2001, thirty-four days before applicants' filing date. Enclosed is a Declaration of Prior Invention Under 37 CFR §1.131 signed by the inventors in this application. This Declaration includes a copy of applicants' invention disclosure which documents the conception of their invention prior to October 2, 2001. The inventors refer to the preparation of their patent application by their patent attorney for filing on November 5, 2001, including the preparation of 22 pages of specification and claims, eight pages of drawings, a declaration, an assignment, and an information disclosure statement with five enclosed documents as evidence of their diligence during the period October 1 - November 5, 2001. During this period their application was in its final stages of preparation as is evident from the record of the November 5, 2001 filing in this case. Accordingly it

is respectfully submitted that the Nova application is no longer a reference in this case. Accordingly it is further respectfully submitted that the 103(a) rejection can no longer be made.

It is respectfully requested that this amendment should be admitted, as the conditions of 37 CFR §1.116(b) and (c) have been met. No amendment touching the merits of the application have been made. The only claim amendment made herein is the clarification which was suggested by the Examiner, which was adopted *in toto*. The terminal disclaimer and the 131 declaration were both prompted by the appearance of the Palmer patent which was not of record nor known to applicants or their attorney until this final Office action. For these reasons it is respectfully requested that entry of this amendment be permitted to put this case into condition for allowance.

Respectfully submitted,

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